

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 2564 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MANUBHAI NANJIBHAI MOCHI - Appellant(s)
Versus
GUJARAT STATE ROAD TRANSPORT CORPORATION & 1 -
Defendant(s)

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Appearance :

MS MITTAL UKANI with MR RJ OZA for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MRS VASAVDATTA BHATT for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 21/03/2007****ORAL JUDGMENT**

The original claimant has filed this appeal for seeking enhancement of the compensation. The Motor Accident Claims Tribunal [Main], Bhavnagar by its judgment and award dated 8/5/1991 rendered in

M.A.C. Petition No. 42 of 1984, granted compensation of Rs.39,100/- to the appellant for the death of his mother in vehicular accident which occurred on 18/1/1984 around 5.30 p.m. On that day the deceased was standing at Gariyadhar S T Bus Stand. She was aged about 40 years. Respondent no. 2, the driver of the bus of the ownership of respondent no. 1, tried to take his bus in the reverse. In the process, he knocked down the deceased and she was crushed underneath the bus. According to the appellant, the deceased was earning daily wage of Rs.15/- and she was also rendering household services. He, therefore, filed the petition under the provisions of the Motor Vehicles Act for obtaining compensation of Rs.80,000/-. The Tribunal, on the basis of the material produced before it, partly allowed the claim and awarded Rs.39,100/- by way of compensation. The Tribunal found that the driver of the bus i.e., respondent no. 2 was negligent to the extent of 85%; whereas the deceased was negligent to the extent of 15%.

2. Miss Mittal Ukani, learned advocate appearing for Mr. RJ Oza for the appellant has submitted that the award made by the Claims Tribunal is inadequate and it is required to be enhanced. She has submitted that the Tribunal has wrongly held that the deceased was negligent to the extent of 15%. She has further submitted that the Tribunal has not properly appreciated evidence with regard to loss of prospective income. She has also submitted that the Tribunal has failed to take into consideration the services rendered by the

deceased not as housewife but as a mother. She has lastly submitted that the multiplier applied by the Tribunal is less and it ought to have been 20.

2.1. As against that, Ms. Vasavdatta Bhatt, learned advocate appearing for the respondents has supported the judgment and has submitted that the award of the Tribunal is just and proper and this Court is not required to interfere in the same. She has, therefore, submitted that there is no merit in the appeal and it is required to be dismissed.

3. I have carefully considered the submissions of the learned advocates. I have also closely perused the record and proceedings of the case. So far as the factum of accident is concerned, there is no dispute. The question that is required to be considered is whether the deceased was negligent to the extent of 15%. The accident occurred at the bus stand. The driver was taking the bus in reverse. He should have therefore, realized that if he did not take enough care, some accident was likely to take place. It also appears that there was no Conductor to guide him. As against that, there is no material on record to show that the deceased was negligent to the extent of 15%. It is the say of the respondents that she along with others ran towards the bus with a view to board it and while doing so, she came underneath the bus. However, there is no supporting evidence to this fact. It, therefore, appears that there was sole negligence on the part of respondent no. 2. Hence, the said finding is erroneous and it is quashed and set aside.

3.1. So far as the quantum of compensation under the head of loss of dependency benefit is concerned, it is in evidence that the deceased was earning at-least Rs.15/- per day as a daily wage. The Tribunal has taken her monthly income to be Rs.400/-. It has further deducted Rs.200/- which the deceased might have spent on her. So the loss of dependency benefit has been decided on the basis of monthly income of Rs.200/- and multiplier of 15 has been applied. The Tribunal has overlooked one fact that the deceased was around 40 years of age and she would have continued her activity of earning income for considerably long period. Her income would not have remained static and it would have increased with the passage of time. The Tribunal has assessed the income at Rs.400/- and, therefore, to decide the future income as per the formula evolved by the Division Bench of this Court in the case of Ritaben alias Vanitaben wd/o. Dipakbhai Haribhai v/s. Ahmedabad Municipal Transport Service reported in 1999 (1) G.L.R., p.388, can be applied and in accordance with the same, the future income would be Rs.600/- and the loss of dependency benefit would be Rs.300/-. The said loss would be per month. Annually it would be Rs.3,600/-. If it is multiplied by 15, it would be Rs.54,000/-. The Tribunal has already awarded Rs.36,000/- under this head. Therefore, the appellant is entitled to receive additional compensation of Rs.18,000/- under this head.

3.2. It is in evidence that the appellant is polio stricken. He was solely

dependent on his mother for his maintenance. Deceased as a mother, rendered household services to him over and above earning livelihood for him. Evaluation of such services is not made by the Tribunal. Considering the fact that she was also earning income for the family, she would not have rendered the full time for household services. But even then her such services can be evaluated at Rs.1,000/- per month. The Apex Court in the case of Lata Wadhwa v. State of Bihar reported in AIR 2001 S.C. 3218, has observed as under :-

“10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given dates for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3,000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore, should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and thereafter applying the multiplier, as has been applied

already, and so far as the conventional amount is concerned, the same should be Rs.50,000/- instead of Rs.25,000/- given under the report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs.10,000/- per annum and multiplier applied is eight. Though, the multiplier applied is correct, but the value of services rendered at Rs.10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs.20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs.20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs.50,000/- towards the conventional figure.”

Evaluation of her services is not made by the Tribunal. Hence, in my opinion, the compensation that could be awarded would come to Rs.1,000/- p m and Rs.12,000/- per annum and applying multiplier of 15, it would come to Rs.1,80,000/-. The claimant has, however, claimed Rs.80,000/-. Hence, his full claim is required to be allowed. The Tribunal has awarded Rs.46,000/- and deducted 15% out of it and has held Rs.39,100/- is payable to the claimant, but the finding regarding 15% of the deceased is quashed and set aside and, therefore, the appellant is entitled to receive Rs.46,000/- over and above that, the appellant is also entitled to receive additional compensation of Rs.18,000/- under the head of loss of prospective income and Rs.1,80,000/- for loss of services. The claim is restricted to Rs.80,000/-. Hence, the entire amount together with interest and costs as held by the Tribunal is awarded to the appellant. This appeal is, therefore, allowed.

Registry is directed to transmit the R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.